Filed 1/28/10 In re A.W. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re A. W., a Person Coming Under the Juvenile Court Law.	
BUTTE COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. K. W. et al., Defendants and Appellants.	C061823 (Super. Ct. No. J33828)

Appellants, mother and father of the minor, appeal from the juvenile court's orders terminating their parental rights and freeing the minor for adoption. (Welf. & Inst. Code, §§ 366.26, 395.)[1] Mother contends reunification services should not have been terminated because she had not been provided reasonable

[1] Further undesignated statutory references are to the Welfare and Institutions Code.

services and she had sufficiently progressed in the services she did receive.[2] Both parents contend the evidence was insufficient to support the juvenile court's finding that the minor is adoptable. We shall affirm.

BACKGROUND

The minor was six months old when she was detained on December 23, 2007. Officers had responded to a call that a family was living in their car behind a restaurant. Officers found the minor living in a car with mother, father, the maternal grandmother, the maternal grandfather, and four dogs. The car had a foul odor of poor hygiene, human and animal, and the adults were smoking in the car with the window open only approximately one inch. The family had reportedly been living in the car and local motels, on and off, for four months. The infant minor was taken into protective custody. The four adults were arrested on misdemeanor child endangerment charges, and later cited and released.

When the social worker arrived, the minor was dressed in soiled clothing that smelled of dried urine. The minor also had

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[2] Father joins in mother's arguments to the extent they inure to his benefit. Because mother raised these issues in a petition for extraordinary writ which was summarily denied pursuant to *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1514, she may renew them here. (*C. W. et al. v. Superior Court* (Feb. 25, 2009, C060605) [nonpub. order].) However, although father filed a notice of intent to file a writ petition, he did not file a petition in this court. Accordingly, he did not preserve the issue of reunification services for appeal. (§ 366.26, subd. (ℓ).)

a foul odor about her and had dirt and dog hair in the crevices of her body. Her bottle smelled of sour baby formula. She was very skinny, weighing only 11 pounds four ounces.

The social worker spoke with mother and learned that both parents have developmental delays, but mother reported that a regional center had told them their disabilities were not significant enough to qualify for services. Mother also reported that the minor had been diagnosed with multicystic kidney disorder.

The Butte County Department of Employment and Social Services (the Department) filed a section 300 petition on December 26, 2007, alleging neglect and failure to protect. The parents submitted on the petition and, on January 31, 2008, the juvenile court found that the allegations were true and that the minor came within the provisions of section 300, subdivision(b).

The social worker's disposition report, filed on February 22, 2008, recommended reunification services be provided to the family. The family had moved to California from Alabama in August 2007. At the time they left, Alabama Child Protective Services was investigating the family for medical neglect of the minor. From August to December 2007, after the family arrived in California, there had been seven referrals for neglect made to Butte County Children's Services.

The parents were unable to demonstrate an ability to understand the physical and medical needs of the minor. They did not seem to understand the severity of the minor's condition. The minor had severe developmental delays, and

failure to thrive, unrelated to her kidney disorder, was suspected. At eight months of age, the minor was still unable to hold a toy. Her head control and motor movements were poor and at the level of a one-month-old infant. She could not sit, roll over, or crawl. She was behind on her immunizations and was in renal failure at detention due to lack of nutrition--a condition that had resolved in foster care.[3] She also had bone abnormalities and fused toes. Nonetheless, the parents refused to believe there was anything wrong with the minor other than her multicystic kidney and insisted that "everyone is a liar."

The parents were extremely defensive about being labeled "retard[s]." They initially refused the social worker's request to have the minor evaluated at Far Northern Regional Center services. After four meetings with Children's Services, the parents finally agreed to sign the necessary releases for the evaluation. They refused, however, to be assessed themselves. They had demonstrated a basic lack of understanding of parenting, basic hygiene, and care of the minor.

Since the minor's detention, the parents had been attending a parent support group for initial counseling. After five of eight sessions, the facilitator thought mother lacked insight. At the end of the course, he recommended anger management, life skills and counseling services. The parents seemed primarily

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[3] The minor has a multicystic dysplastic left kidney which is likely not functioning. Her right kidney, however, is normal.

focused on the legality of the detention of their child, rather than learning to appropriately care for her.

The parents also had visitation with the minor three times each week. Visitations began as quite stressful for both the minor and mother. The parents did not know how to soothe the minor, leaving the minor anxious and incessantly crying during and after the visits. The more the minor cried, the more frenzied and loud mother became. Mother was given suggestions on soothing techniques and the visits improved. Father rarely interacted with the minor during visits. Mother stated on three occasions that "as soon as I have my baby, we are going to leave the state so that Child Protective Services cannot locate [us]."

The disposition hearing took place on March 6, 2008. The juvenile court removed the minor from the parents' custody and ordered reunification services. The court urged the parents to cooperate and set an interim oral review to monitor their progress.

On April 24, 2008, the social worker gave an oral report to the juvenile court regarding the parents' progress in services. She reported that they were attending the services as ordered but did not seem to be actively participating or understanding the services. The clinicians were reporting that the parents were spending more time arguing during class about the legality of the minor's detention than they spent listening to information about how to care for the minor. Visitation had been going well until a recent visit during which the parents had stripped the minor, causing the minor to scream and cry, and

then taken pictures of the minor instead of comforting her. The court admonished the parents to focus on nurturing the minor during visits and demonstrate they can benefit from services and make parenting a priority.

The social worker filed a six-month review report on July 10, 2008. The social worker reported that, in addition to the developmental and physical problems noted earlier, the minor had poor weight gain, persistent vomiting, bronchitis, and absent patellas (kneecaps). At one year of age, her motor skills were still uncontrolled and uncoordinated. She was delayed in "all areas of development."

The parents remained defiant, resistant and hostile. From March 1, 2008, to July 10, 2008, Children's Services had received over 90 hostile telephone calls from mother. The parents continued to argue about the legality of the minor's detention instead of focusing on progressing in services. They had completed the parent support group, life skills class, and parent education course, and had begun individual counseling. They had still, however, failed to make any progress in changing their lifestyle or in demonstrating the ability to meet the needs of the minor. They had not attended any of the minor's medical appointments because they did "not want to go and listen to the doctors lie and say there is something else wrong with her besides her kidney problem." They accused everyone involved with the minor's care of being "liars." The parents were living with the maternal grandparents in a hotel in Chico. The Department requested reunification services be terminated.

By the time the six-month review hearing was completed in December 2008, mother had still not accepted the specialists' reports of the minor's medical and developmental problems. Instead, she testified she did not know what was going on with the minor and wanted a second opinion. She claimed, however, to have been "changing" her attitude toward the social worker since September, but still saw "some things that they're saying is a lie [*sic*]," and still blamed the social worker for causing her father's fatal heart attack because the heart attack had been caused by stress.

The juvenile court found the Department had provided reasonable reunification services but that, although the parents had participated regularly in the services, they had failed to make sufficient progress. The court terminated reunification services and set a section 366.26 hearing.

The section 366.26 hearing was held on April 23, 2009. At that time, the minor had been in her current foster parents' home for over a year. She remained medically and emotionally fragile, with significant medical issues and developmental delays, but she was able to roll over and appeared happy. Her foster parents were aware of the minor's significant delays and medical problems, and were committed to the minor and wished to adopt. They appeared suitable to adopt the minor, and had four other adopted, special needs children at home.

The juvenile court found clear and convincing evidence that the minor would be adopted and terminated parental rights.

DISCUSSION

I

Reasonable Services were Provided

Mother contends the juvenile court's order terminating reunification services was in error because she did not receive reasonable reunification services. We disagree.

The purpose of reunification services is to correct the conditions that led to removal so the dependent child can be returned home. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) "Reunification services implement 'the law's strong preference for maintaining the family relationships if at all possible.' [Citation.]" (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) The case plan "must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding. [Citation.]" (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) The social worker must make a good faith effort to provide reasonable services responding to the unique needs of each family and "in spite of the difficulties of doing so or the prospects of success." (*Ibid.*; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.)

In evaluating reunification services, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) The juvenile court's finding regarding the reasonableness of services will be upheld if it is supported

by substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

Here, to address the reasons for removal of the minor, the case plan called for parents to complete an eight-session parent support group within 10 weeks. This course addresses the juvenile court process, working with Children's Services, and dealing with loss, denial and anger. After completion of this session, mother was to be reassessed regarding further needs, and referrals, including continued group work in parenting, anger management, life skills, or individual counseling. The plan also specifically provided that mother would participate in groups for life skills, parent training and anger management, along with a parenting education program. The record reflects that the Department adhered to this plan.

The disposition order was entered on March 6, 2008. By March 4, 2008, mother had completed the eight-week parent support group. Unfortunately, the facilitator reported that mother had made no progress and recommended mother participate in anger management, life skills, individual counseling, and parenting education.

The social worker found the parents to be easily overwhelmed by numerous ongoing services, so groups and classes were kept to once weekly. Mother was referred to the life skills course on March 7, 2008, and completed it on May 27, 2008. The therapist recommended mother be given a psychiatric evaluation to address her grasp of reality and provided with individual counseling. Mother was referred to individual

counseling with Mr. Harvey Bender on May 29, 2008, and she began on June 19, 2008. Mother completed her parenting education course by July 10, 2008, but had not yet begun an anger management course, as anger management was being addressed in individual counseling and the course was to follow. Mother had also been asked in February 2008 to be evaluated by Far Northern Regional Center to determine whether she qualified for additional services. She initially refused but, eventually agreed to be evaluated in July 2008. She did not qualify for Far Northern Regional Center services.

The six-month review hearing, after which services were found reasonable, began in October 2008 and continued in November and December 2008. As demonstrated from the above recitation, services were provided in accordance with the reunification plan.

Mother contends the Department did not provide adequate services in individual counseling because the social worker did not provide more information about the minor's developmental and physical problems to Mr. Bender. The importance of providing such additional information, however, is speculative. Mr. Bender did know that the minor had developmental delays. Mr. Bender did testify that any information he receives is helpful. He also stated that, had he been provided with more detailed information about the minor's medical and developmental problems, he would have spent more time trying to get mother to realize how severe they were. Mr. Bender did not, however, testify that he was unable to provide adequate counseling

because of the lack of such information, nor did he testify that mother would have likely made more progress in counseling had he been provided detailed information about the minor's problems. Indeed, Mr. Bender had not yet even succeeded in getting mother to accept there was anything wrong with raising her child in a vehicle with four people and four dogs.

Mother also contends that services were inadequate because she was not provided with specialized parenting training that was tailored to parenting special needs children. We reject this contention. Mother was enrolled in and completed a parent education course. The facilitator, however, was unable to determine how much of the information mother internalized. The parents were also enrolled in a program called the parent infant program (PIP), wherein they worked individually as a family (mother, father and minor) with a developmental specialist, Jennifer Vnuk. During their sessions, they were to work toward the minor's goals in cognitive, language, fine motor, gross motor and social skills. Ms. Vnuk reported that neither parent was able to carry over skills learned at one session to another session. Mother did not seem to have a grasp of the minor's developmental problems because she was, instead, focused on the pending case or tangential things such as not wanting the minor to have the "fat gene." Nor did mother seem to have a basic understanding of child development. Since mother tended to be overwhelmed by too many concurrent services, it was reasonable to proceed with, and require progress in, these services before adding more such services.

Finally, mother complains that the Department did not provide her with sufficient services to assist her in finding adequate housing. The reunification plan, however, did not provide for services to assist her in procuring housing. Since she did not challenge this aspect of the reunification plan at the dispositional hearing, she has waived any complaint about the lack of services to assist her in finding housing. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476.) Moreover, we note that, prior to disposition, father's second cousin had offered to take the parents into her home and assist them with budgeting, hygiene, life skills and parenting classes. The parents stayed two nights and left. Father's second cousin also located an apartment, but the parents opted to continue residing in their car. The social worker also referred the parents to Caminar assisted living and North Valley Catholic Social Services for housing. Although the parents did not qualify for Caminar, they did qualify for North Valley Catholic Social Services assistance. The waiting list, however, was very long. The social worker also twice provided parents with Butte County information on low cost housing and shelters. The social worker also checked with the financial analyst at Children's Services and confirmed that it did not have the funds to provide the parents with first and last months' rent to assist them in obtaining housing.

We agree with the juvenile court that these efforts were reasonable.

II

Mother Did Not Make Sufficient Progress

Mother also contends the juvenile court's order terminating reunification services was in error because, contrary to the juvenile court's findings, she had sufficiently progressed in reunification services. Again, we disagree.

Section 366.21, subdivision (e) provides, in pertinent part: "If the child was under three years of age on the date of the initial removal, . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e).)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) The reviewing court may not

reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Here, substantial evidence supports the juvenile court's finding that, while mother participated in services, she failed to make significant progress in the treatment plan to resolve the problems that require continued removal of the minor.

Mother completed her parent support group on March 4, 2008. The facilitator, however, stated that, although mother was present, she made no progress. She did not gain any insight into the roots of her situation, and her understanding of the process was marginal. She also demonstrated extreme codependence and had trouble managing her anger.

Mother completed her life skills class on May 27, 2008. She was initially only minimally cooperative. Moreover, she frequently distracted the group with stories of how Children's Services was persecuting her and her family and made up stories about how Children's Services was hurting her child. She had difficulty accepting she had any part in the minor's detention, and the facilitator believed she may have difficulty in reality testing. Additionally, mother constantly complained that there were no topics in the class which she found relevant to her life. The facilitator of the program was unable to determine how much of the information mother internalized.

Mother also participated in the PIP program, wherein she worked with developmental specialist, Ms. Vnuk, toward achieving the minor's goals in cognitive, language, fine motor, gross motor and social skills. Ms. Vnuk reported that, although

mother was present at a majority of the sessions, mother did not regularly and consistently participate in the process. Mother was unable to carry over skills learned at one session to another session. She did not seem to have a basic understanding of child development or a grasp of the minor's developmental problems. Ms. Vnuk concluded that mother's ability to monitor and help promote the minor's development was limited.

Mother also attended eight individual counseling sessions with Mr. Bender. When asked if mother had benefitted from counseling, Mr. Bender replied that "[s]he was benefiting from counseling sessions. She still had a hard time accepting responsibility for the detainment of her child at that point." He thought she was making progress, but did not think she had made as much progress as she probably could have. She continued to minimize the extent of the minor's developmental and physical problems. At the conclusion of the eight sessions, Mr. Bender remained unable to determine if mother's emotional or mental stability would affect her ability to parent the minor. He also remained unable to determine how much individual counseling may or may not be helpful to mother.

It is true, as mother contends, that visitation had become somewhat less traumatic for the minor over time. But overall, mother had made little to no progress in her reunification services. She remained defiant, aggressive, and in denial regarding the needs of the minor and the services she required. Mere participation in services is simply not sufficient. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1143.) An

understanding of the problems contributing to detention of the minor, the learning of necessary information and skills, and the ability to apply that knowledge so as to ameliorate the reasons for detention of the minor is required. (*Ibid*.) Substantial evidence supports the juvenile court's finding that mother had failed to make substantive progress in reunification services.

III

Minor is Adoptable

Finally, parents contend that termination of parental rights was error because the juvenile court's findings that the minor was likely to be adopted was not supported by the evidence.

"If the court determines, based on the assessment . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c).)

Again, we review the juvenile court's findings and order for substantial evidence. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 924; *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214.) We may not reweigh the evidence. (*In re Stephanie M.*, *supra,* 7 Cal.4th at pp. 318-319.)

Determination of whether a child is likely to be adopted focuses first upon the characteristics of the child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) In this case, the minor had medical and developmental issues requiring extensive care. As a result, the adoptions specialist and social worker

found her specifically rather than generally adoptable, since there were prospective adoptive parents presently willing to adopt. (*Id*. at p. 1650.) When a child is specifically adoptable, inquiry into the existence of a legal impediment to adoption by the prospective adoptive parents may be relevant at the section 366.26 hearing. (*Ibid.*; Fam. Code, § 8600 et seq.) In the case of a child who will need specialized care for an extended period of time, it may also be appropriate for the juvenile court to inquire whether the prospective adoptive parents can meet the child's ongoing needs. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062.)

No impediments are apparent here. The foster parents unequivocally expressed their willingness and desire to adopt. The minor has been placed in their home since January 11, 2008, and has bonded with them. The foster parents have been demonstrating good parenting practices and the capability to care for and meet the needs of the minor. Additionally, the foster parents have four other adopted children, ages four to 10--all of whom are special needs children. The foster parents are very experienced and educated regarding special needs and are very involved in their children's treatments. There are also no legal impediments to their adoption of this minor.

On appeal, the parents argue that the physical health and age of the foster parents, in conjunction with the possibility that the minor's medical and/or developmental condition may worsen in the future, render the foster parents' suitability

to adopt the minor questionable. Such dismal speculation is unwarranted on this record.

The foster parents are not particularly old (ages 54 and 45), nor are they in poor health. (*In re T.S.* (2003) 113 Cal.App.4th 1323, 1328 [older age, even in absence of physical examination, is not a legal impediment to adoption].) The foster father reportedly has high blood pressure and cholesterol, and arthritis, all of which are controlled with medication. The foster mother has rheumatoid arthritis and esophagitis, which are also controlled by medication. The four other adopted children in their home have medical issues but are stable. The foster parents also have adult children who would be guardians if something happened to them. They are fully aware of this minor's medical needs and there is nothing in the record to suggest that they would not be able and willing to handle any future needs the minor may develop.

Ample evidence supported the juvenile court's conclusion that the minor was adoptable by her current caretakers.

DISPOSITION

The orders of the juvenile court are affirmed.

ROBIE, J.

We concur:

SCOTLAND, P. J.

CANTIL-SAKAUYE, J.